

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

TERRY S. EVERSOLE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Civil Action No. 3:11CV00428
FORD MOTOR COMPANY	)	
	)	
and	)	
	)	
CATERPILLAR, INC.,	)	
	)	
Defendants.	)	

**PLAINTIFF’S MOTION FOR AN EXTENSION TO RESPOND TO  
FORD MOTOR COMPANY’S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Plaintiff, Terry Eversole, by and through his counsel, and moves to extend the time permitted to respond to Ford Motor Company’s Motion for Summary Judgment pursuant to Rule 7(I), Rules of the United States District Court for the Eastern District of Virginia. Ford Motor Company’s Motion for Summary Judgment was served March 2, 2012. Plaintiff requests that he be permitted until March 22, 2012, to respond.

The claims in this matter involve two remedial statutes, the interpretation of which should favor the consumers whom the statutes were intended to benefit. Ford Motor Company contends that the Plaintiff is not a “consumer” under those statutes and that the vehicle does not qualify as a “consumer product.” But Ford Motor Company issues instructions to builders of recreational vehicles as to how to “upfit” this truck to use it as a personal, recreational vehicle. Those

instructions were provided to Ford's counsel by Plaintiff, but not referenced in its attempt to classify the truck as entirely commercial in nature. Reference to them now, and their inclusion as an exhibit to Plaintiff's Memorandum in Opposition to Ford's Motion for Summary Judgment would not therefore be prejudicial to Ford.

Ford's memorandum in support also includes as undisputed some facts regarding Plaintiff's use of the vehicle which are in fact in dispute, particularly referring to the deposition of Plaintiff, which should be considered as a whole. Further, Ford's motion identifies the language in the Magnuson-Moss Warranty Act describing the scope of the Act's coverage, but does not mention the rules prescribed by the Federal Trade Commission defining the products covered. See 16 C.F.R. 700.1(a). These fact-based arguments are more fully set out in the memorandum accompanying this request, and in the Memorandum in Opposition to Ford's Motion for Summary Judgment. Plaintiff's counsel is late in responding to Ford Motor Company's Motion for Summary Judgment for several reasons. I had intended to devote considerable time to respond to the motion, which necessitates reading Ford's exhibits and reading all the cases cited by Ford, as well as gathering evidence to support Plaintiff's position, but had not familiarized myself with the Local Rules, except to read Local Rule 56, without referring back to Rule 7(F). Practicing entirely in state court (except for one motion in each District Court in Virginia, each year ago), I was unaware of the deadline running forward from the date of service of the motion rather than backward from the date of the hearing (Rule 4:15, Rules of the Supreme Court of Virginia). No hearing having been set, I believed I had plenty of time to respond.

Plaintiff's response to Caterpillar's Motion for Summary Judgment was timely and raises issues related to both defendants, so that the arguments in response to Caterpillar's motion should

also be considered arguments against Ford Motor Company's motion. That is, in deciding whether to grant or deny the defendants' motions for summary judgment, the Court need make a determination as to whether this type of vehicle qualifies as a consumer product under the Magnuson-Moss Warranty Act, which requires consideration of the Federal Trade Commission's interpretation of the Act.

Plaintiff requests leave for an extension of time, until March 22, 2012, to file a Memorandum in Opposition to Ford Motor Company's Motion for Summary Judgment

TERRY S. EVERSOLE

By: /s/ Patty Anderson  
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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2012, copies of the foregoing Motion for Extension was sent via electronic mail to the following:

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